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IN THE

Supreme Court of the United States

OCTOBER TERM, 1936

No. 146

JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY,

Petitioner,

Versus

EDNA K. YATES,

Respondent.

BRIEF FOR RESPONDENT

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THE ISSUE

In the petition for writ of certiorari there is no specification of error. There are set up facts from which we may deduce that petitioner is claiming that under the undisputed facts applied to the New York law petitioner should have had a verdict directed in its favor. Our contention is that under the New York law and decisions the facts were for the jury.

On page 10 of the brief in support of the petition for the writ of certiorari there is a specification of error based upon the claim that the Supreme Court of Georgia held "that it

was not bound to give the same faith and credit to an applicable statute of the State of New York as such statute by law and usage receives in the courts of New York." It is respectfully submitted that the Supreme Court of Georgia did in its judgment conform to the New York law, rendering such a judgment as could legally be rendered by the courts of that state. That there is nothing in the decisions of record of the courts or in the statute in New York which shows that a judgment could not have been reached under those decisions and law similar to the judgment that was reached in this case. Georgia courts construed and applied the New York law.

At page 4 of the petition for writ of certiorari in this case there is stated in giving the contentions of the petitioner what apparently are the errors it relies on. These may be stated as follows:

(1) The policy was void because the insured falsely stated that he had not had indigestion; and

(2) That insured "falsely stated in his application that he had never had or been treated for cancer or tumor."

We shall state the evidence and discuss its meaning under the New York law as construed by the courts of that state and we believe that such discussion will show that there is nothing in the New York statute that prevented the submission of these issues to a jury and that there is ample evidence in the record to support the findings of the jury, which were affirmed by the Appellate Courts in Georgia.

For decisions below, see 50 Ga. App. 713, this record 57; 182 Ga. 213, this record 74.

1. The Claim That Insured Falsely Said That He Had Not Had Indigestion

FACTS

The application for the insurance here involved appears of record beginning at page 16. Question 26 and the answer read:

> "Are you now in good health, so far as you know? Yes." (R. 17).

Question 34 (R. 18) asks the insured if he had been treated for certain named diseases and under the name "Indigestion", he answered, "No." That is an answer that it is claimed in this proceeding was false.

The facts are that prior to May 2, 1932, and, as the Doctor states in one place, on "April 7, 1932" (R. 52, Ex. 4), the insured and his wife went to Dr. Davison, who gave the insured Milk of Magnesia. The wife testified that she did not know of her husband visiting Dr. Davison but one time, that her husband took the Milk of Magnesia only one time (R. 43). The wife also testified that her husband never complained of having any indigestion or anything else after he took the Milk of Magnesia (R. 45).

The application for the insurance was made at the home of the insured in the presence of his wife. The agent for the insurer asked the questions printed on the application, including the question as to indigestion. The applicant for the insurance answered the question by saying, "Nothing more than for indigestion. * * * he had not had any medical advice, only that he had had a slight indigestion." (R. 45.)

To this answer of the applicant for the insurance the agent said, "That is all right." (R. 45).

Dr. Davison himself testified in the case. He said that he had seen the applicant for insurance on April 15, 21, 22 and 29, 1932. The doctor said:

> "When Mr. Yates came to me I examined him thoroughly physically. I was unable to state my diagnosis of a specific cause of any condition which I observed. That is so, after he visited me upon four occasions." (R. 48).

Dr. Davison also signed a form when proofs of death were made. This form is called defendant's Exhibit No. 4 and follows R. page 52. In this form the physician stated that he had attended the insured April 7, 1932, and that at that time the insured was suffering from "secondary anemia." The doctor answered the question as to when the insured's health was first impaired by saying, "Unable to state." These discrepancies in the doctor's testimony were for determination by the jury.

Under these facts we submit that the jury had the right to conclude that the answers of the applicant for insurance were true and that even if these answers were not true they were thought to be true, given in good faith, and that the agent of the petitioner for certiorari with the facts before him construed the facts as not meaning any disease. (R. 45).

Indigestion is an ambiguous word. It may mean that too much food or the wrong kind of food has been taken and there is a temporary functional disturbance of digestion, or it may mean something that would indicate cancer or other serious disease. Dr. Davison was unable to diagnose the

case and the treatment he gave indicated that he thought the condition was temporary.

The applicant was in good health and there was nothing to indicate to him or to his wife that there was more than a mere temporary indigestion. The agent of the insurance company, nesessarily familiar with that line of business, because he was an agent, and with all the information that the insured gave him, had construed the facts to mean that it was not indigestion within the meaning of the application. This is a possible construction. It is a construction made by the petitioner-defendant. It certainly was thought by the insured to be a correct construction and under the facts the jury found that there was a correct construction and this the jury had the right to find under the New York law as construed and as we will later discuss.

2. The Claim That The Insured Had Cancer

FACTS

In question 34 (R. 18) the applicant for the insurance was asked if he had ever been treated for "cancer or tumor" and he answered "No." This answer is absolutely true. Dr. Davison, as stated above, was not able "to state my diagnosis of a specific cause of any condition which I had observed." Dr. Davison did not know it was cancer and the record as now made does not disclose that the applicant had cancer at the time he was treated by Dr. Davison or at the time he applied for insurance. Dr. Schmidt, the operating physician, "didn't know what was wrong." (R. 45). Certainly, the applicant was correctly answering as required by Question 26 (R. 17) "as far as he knew."

In this connection, defendant's Exhibit No. 3, following Record 52, should be considered. This is the statement of Dr. Schmidt and in this statement the doctor says that he had known the insured from June 3, 1932, up to the time of his death on the 23rd of June. He had attended the insured for these twenty days. He had never attended him theretofore. His first visit was June 3. His last, June 23rd. The doctor was asked,

"8. When in your opinion was health first impaired?"

This question he does not answer, although in answer to Question 10 he said that the insured showed symptoms of the disease March, 1932. Inasmuch as the doctor did not know the deceased until June 3, 1932, and told the widow of insured he "didn't know what was wrong," he could not have known that his answer was true. Certainly, a jury had a right to believe that it was not true. Question 11 asked the source of the doctor's information, and this question he does not answer. The jury had a right to believe that cancer if it existed, developed after Dr. Davison examined the applicant and after the application was made and the policy was issued.

Dr. John F. Denton, testifying (R. 102), said:

"A person could have secondary anemia from other causes besides cancer."

"A man could have a tumor or even a cancer in his stomach and not know it."

"A cancer is usually not painful until its last stages."

"I expect it is true that there has been many a man die of cancer that never knew he had one."

and at page 103 Dr. Denton said:

> "I would say that if a man was working regularly every day and his appearance was of good health and he had perfect digestion and made no complaints and didn't appear from his looks to be a sick man, I would say that he didn't have a cancer, or any disease in its last stages."

The jury had the right to believe this statement.

At Record 103 and 104 the employer of the applicant testified to the applicant's good health. About a week before the operation (R. 104) the witness said that the insured

> " *** was as well as I ever saw him. He ate his meals regularly and there was nothing to indicate during his visit in my home that there was anything whatsoever the matter with him. *** I saw nothing to indicate that he was suffering from any disease at all. He was as well as I had always seen him, which was in pretty good health at all times."

This confirms the testimony of Dr. Denton.

Under these facts the jury could find that the applicant truthfully answered when he said that he had never been treated for cancer or tumor and that he was in good health so far as he knew.

ARGUMENT

In the opinion of the Court of Appeals of Georgia, which was affirmed by the Supreme Court, there was discussed somewhat at length the evidence and the evidence there discussed and stated supports the verdict of the jury, which the court found was supported by competent evidence. If this is true, and we believe the facts clearly so demonstrate, we need not discuss whether or not all the argument of the Court of Appeals and of the Supreme Court is legally sound. If the facts justified the verdict of the jury, that verdict should have been affirmed and it makes no difference what reasons were given for affirming it. If, as we contend, that verdict was authorized by the evidence, it should now be sustained. The attack here is on the reasons of the Appellate Courts.

The New York Law Justifies The Action Of The Trial Court

The New York statute (R. 53) upon which petitioner relies does little more than make the application part of the contract and we agree that it is "in the absence of fraud."

The decision of the New York Court of Appeals in *Minsker v. John Hancock Life Insurance Company* (R. 53) is not itself as clear as it might be. It does hold that recovery could not in that case be had

> "Because the medical examiner incorrectly recorded the applicant's answers."

We need not contest this principle. We believe the evidence shows that the medical examiner correctly recorded the an-

swers. It is true that the medical examiner said there was no indigestion, but is not that a correct answer? The medical examiner construed a temporary disturbance of the stomach as not being indigestion. That construction we believe was right and if it were not right there was proof of good faith on the part of the applicant for the insurance and the insurance company, through its agent, knowing all the facts and having reached a conclusion from the facts can not without fraud now deny the correctness of that conclusion. It was in the opinion of both parties to the contract a correct conclusion.

The New York Court in the *Minsker Case* makes part of its decision *Northern Assurance Company v. Grand View Building Association*, 183 U. S. 308, and some of the expressions of this court in that case illustrate what the New York Court meant by its opinion. Permit us to make some reference to this court's decision.

> "Parol evidence is to be received in the case of an *ambiguitas latens*," etc. (Page 324.)

Frequently in the course of its opinion this court refers to "imperfections" or "ambiguity" in the contract and also to whether or not the contract is "free from fraud or mistake." The New York statute applies in the "absence of fraud." (R. 53). At page 327 this court said:

> "To take the benefit of a contract with full knowledge of all the facts, and attempt afterwards to defeat it, when called upon to perform, by asserting conditions relating to those facts, would be to claim that no contract was made, and thus operate as a fraud upon the other party."

and at page 331 the court said:

> "If it be ambiguous in its terms, parol evidence, such as would be competent to remove an ambiguity in other written contracts, may be resorted to for the purpose of explaining its meaning."

Defining the defense of estoppel, this court said:

> "Such a defense rests on a *misconception* as to a state of facts, *induced by the party against whom it is set up.* The person who seeks to take advantage of it must have been misled by the words or conduct of another. Now, in the present case, the agent did not make any statement, nor did he do anything which led the plaintiff to alter his condition. The most that can be laid to his charge is that from carelessness he omitted properly to describe the use of the premises insured. But this was not a misstatement of a fact on which the plaintiff acted, because the plaintiff was aware of the circumstance that the building was put to another use." (Page 337).

At another place (Page 349) this court referred to the fact that the agent as is true here, entered an answer "upon the strength of his own judgment." At page 352 this court said:

> "It is not perceived that this case has any valid application to the case now before us, beyond apparently holding, with Union Mut. L. Ins. Co. v. Wilkinson, in 13 Wall. 232, 20 L. Ed. 622, that it may be shown by parol that a statement which purports to have been made by an applicant for insurance was not, in point of fact, his statement, but was really that of the agent."

In *Mutual Life Insurance Company v. Hilton-Green,* 241 U. S. 613, 622, 623, 624, the general rule that imputes an

agent's knowledge to the principal was discussed and the court in discussing that rule said, among other things,

> "The relationship demands fair dealing by both parties."

The court was here speaking of the relationship between the insured and the insurer and while perhaps the New York law has changed this general rule insofar as in a clear case to make the answers to the questions binding whether correctly written or not, in the absence of fraud or mistake. The New York rule does not change the general rule of good faith and where, as here, both applicant and the agent of the company construed the answer as being true, the company is estopped in good faith from now claiming otherwise.

The other case upon which petitioner relies, and which is shown at Record 55 ff. is *Travelers Insurance Company v. Pomerantz*. There the insurance company won because, among other things, the insured

> "neither denied nor explained the untrue statement in his application, and he gave no information concerning the state of his health at the time of his medical attention or on the dates of his application, or of his payment of the first premium."

Petitioner contends that the answers to the statements sent in as proofs of death are binding. In the *Travelers Case* they were made prima facie binding but a New York lawyer, a witness for petitioner, throws light upon this phase of the case. This witness, Frederick C. Tanner (R. 101), uses the words "knew that he was in good health." Here the ap-

plicant for insurance did not know he was not in good health. The witness further said,

> "The decisions generally hold that the insurer is entitled to the best answer that the insured is capable of making."

In this case the insurer got the best answer the insured was capable of making, and got the best answer that its own agent was capable of making and this witness, at the bottom of Record 101, concluded by saying:

> "It seems to me the Court or the Jury, if the case is tried before a jury, are ultimately the finders of the fact whether or not the admissions in the proofs of death have been explained away."

It may be that the opinions of the courts below are assailable. It may be that the construction of the New York law was incorrect, but it is certain that under the conflicting evidence the issue was properly submitted to a jury and this applies also under the New York law. No error here relied on by petitioner arises from the charge to the jury by the trial court. Neither party here deemed that charge was material to the petition, and the charge is not in this record. This court, in *Banholzer v. New York Life Insurance Company*, 178 U. S. 402, 408, and *Johnson v. New York Life Insurance Company*, 187 U. S. 491, 496, and other cases cited in those cases and which followed those cases, has held that whether the courts of Georgia were correct or not, in their "conclusions" and "independent construction of the New York statute" is "immaterial." And this court said:

> "To hold otherwise would render it possible to bring

to this court every case wherein the defeated party claimed that the statute of another state has been construed to his detriment."

A correct judgment, although supported by wrong reasons, should be affirmed. *Yazoo & Miss. W. R. Co. v. Mullins*, 249 U. S. 531, 532, 533, and cases there cited.

It is respectfully submitted that no Federal question is involved in this application and the State court should be affirmed.

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